

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

FILED
IN CLERKS OFFICE

2005 FEB 16 P 3:17

JACK C. CHILINGIRIAN,
Petitioner,

U.S. DISTRICT COURT
DISTRICT OF MASS.

vs.

CIVIL DOCKET NO. 05-10005-RCL

DAVID L. WINN, Warden
FEDERAL MEDICAL CENTER DEVENS,
Respondent.

HON. REGINALD C. LINDSAY, USDJ

**MOTION TO DIRECT CLERK OF THE COURT TO COMPLY
WITH ORDER DIRECTING SERVICE OF PROCESS**

NOW COMES the above named Petitioner, **JACK C. CHILINGIRIAN**, Pro Se and hereby files the above captioned Motion to Direct Clerk of the Court to Comply With Order Directing Service of Process and in support states as follows:

1. On January 3, 2005, Petitioner commenced the instant action pursuant to 28 USC §2241 and §2243.
2. As evidenced by the content of the Petition, a request was made to allow the Petitioner to effectuate service of process in conformity with FRCP 4.
3. On January 5, 2005, the Hon. Reginald C. Lindsay, USDJ entered an order directing the Clerk of the Court of the District of Massachusetts to serve a copy of the Petition upon the Office of the U.S. Attorney, the Attorney General of the United States and upon the Office of Immigration and Naturalization. (SEE **EXHIBIT "A" ATTACHED**). The Petitioner did not receive a copy of the order contemporaneous with its entry.

4. On January 11, 2005, the Petitioner without knowledge of the entry of the above recited order filed a Motion and Brief to Allow Service of Process to be Effectuated by a third party chosen by the Petitioner in conformity with FRCP 4.

5. No response has been filed by the Respondent even though service was made upon the U.S. Attorney's Office, the Attorney General of the United States, as well as upon the Respondent Warden, nor has the Court taken any action even after the Petitioner directed a letter dated January 27, 2005 to the Clerk of the Hon. Reginald C. Lindsay, USDJ. (SEE **EXHIBIT "B" ATTACHED**).

6. After Petitioner received a copy of the Docket entries dated January 25, 2005 he ascertained that service had been accomplished only upon Frank Crowley head of the Immigration and Naturalization Service.

7. A copy of this Court's order **EXHIBIT "A"** was directed to Petitioner only after it was requested from Deputy Clerk Stanhope who forwarded it on January 31, 2005, along with docket entries dated that same date.

8. Further, upon examining the docket entries dated January 31, 2005, it was clear that no effort had been made to accomplish service upon the U.S. Attorney's Office nor upon the Attorney General's Office

9. A follow up letter dated February 2, 2005 (**EXHIBIT "C" ATTACHED**) was sent directly to deputy Clerk Stanhope asking as to when an effort at effecting service would be made. No response to these inquiries was furnished by Deputy Clerk Stanhope.

10. On February 7, 2005, Petitioner directed another letter to Deputy Clerk Stanhope which was received by him on February 9, 2005. (SEE **EXHIBIT "D" ATTACHED**). Again no response to the inquiries about the status of service upon U.S. Attorney's Office and the Attorney General's Office was forthcoming.

11. As evidenced by **EXHIBIT "D"** Petitioner has made an effort to follow up on the status of compliance with this Court's Order of January 5, 2005, and determine whether service has been accomplished as directed by the Court.

12. As of the date of the filing of the instant Motion there is no proof that service has been made as ordered by this Court.

13. The actions of the District Court Clerk's Office are violative of Petitioner's constitutional right to access to the Court and with timely resolution of his claims.

14. That service of process upon the U.S. Attorney's Office which is housed in the same building as the Clerk's Office should not take 40 days to accomplish, nor should it take that long to serve the Attorney General of the United States and file proof of service on those two individuals.

15. Further, pursuant to 28 USC §2241 and §2243 this Court after directing that a response should be filed to the Petition should not permit any further delay and should either permit Petitioner to effect service as requested in his Motion of January 11, 2005, or alternatively enter an order directing that the Clerk's Office to immediately serve the appropriate parties forthwith and to shorten the time to respond to 20 days after the entry of the Order being sought by the Petitioner with the filing of this Motion.


16. The sought after relief by the Petitioner is reasonable under the circumstances and this Court should act promptly as to the instant Motion, otherwise the delay in effecting service will prejudice Petitioner's claims for relief.

17. Petitioner relies upon the accompanying Memorandum of Law in support of the instant Motion.

WHEREFORE, Petitioner, **JACK C. CHILINGIRIAN** respectfully requests that this Honorable Court issue an Order directing the Clerk of the Court to accomplish service upon the U.S. Attorney's Office and upon the Attorney General of the United States forthwith and direct that the Respondent file a responsive pleading on or before March 5, 2005.

DATED: FEBRUARY 15, 2005

RESPECTFULLY SUBMITTED,


JACK C. CHILINGIRIAN
22512-039 UNIT I (CAMP)
FEDERAL MEDICAL CENTER DEVENS
P.O. BOX 879
AYER, MA. 01432

CERTIFICATE OF SERVICE

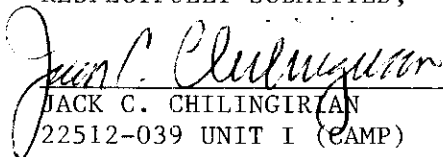
I, JACK C. CHILINGIRIAN, Petitioner in the above entitled matter hereby certify that on the 15th day of February, 2005, I placed a copy of the above captioned Motion and memorandum in Support in the mail box located at the Federal Medical Center, Camp Devens in Ayer, Massachusetts in an envelope sent first-class mail addressed to:

MICHAEL SULLIVAN
U.S. ATTORNEY
DISTRICT OF MASSACHUSETTS
1 COURTHOUSE WAY
SUITE 9200
BOSTON, MA. 02210

ATTORNEY GENERAL OF THE
UNITED STATES
10th & CONSTITUTION AVENUE N.W.
WASHINGTON, D.C. 20530

DATED: FEBRUARY 15, 2005

RESPECTFULLY SUBMITTED,


JACK C. CHILINGIRIAN
22512-039 UNIT I (CAMP)
FEDERAL MEDICAL CENETR DEVENS
P.O. BOX 879
AYER, MA. 01432

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

Jack C. Chilingirian

Petitioner

V.

CIVIL ACTION

NO. 05-10005

David L. Winn, Warden Federal Medical Center

Respondent

ORDER

Lindsay, D. J.

Pursuant to Rule 4(b) of the Rules Governing Section 2241 cases, the Clerk of this Court is hereby ordered to serve a copy of the Petition upon the office of the United States Attorney General, the United States Attorney and the office of Immigration and Naturalization .

It is further ordered that the Respondent shall, within 60 days of receipt of this Order, file an answer or other responsive pleading.

1/5/04

Date

/s/ Reginald C. Lindsay
United States District Judge



I HEREBY ATTEST AND CERTIFY ON 1/31/05
THAT THE ABOVE ENCLOSED DOCUMENT IS A FULL, TRUE
AND CORRECT COPY OF THE ORIGINAL ON FILE
IN MY OFFICE AND IN MY LEGAL CUSTODY.

TONY ANASTAS
CLERK, U.S. DISTRICT COURT
DISTRICT OF MASSACHUSETTS

BY: Don Stanhope

[2255serv.]

EXHIBIT "A"

January 27, 2005

Hon. Reginald C. Lindsay
United States District Judge
District of Massachusetts
1 Courthouse Way
Boston, MA. 02210

ATTN: Clerk of the Court

RE: Jack C. Chilingirian v. David L. Winn
Civil Action No. 05-10005-RCL

Dear Madam/Sir:

On January 3, 2005 I commenced the above captioned matter seeking relief pursuant to 28 USC §2241 & §2243. As of the date of the filing of this letter with your offices and that of the District Court Clerk's Office I have not been informed as to whether a show cause has been issued by the Court directing the Respondent to file an answer to the request for habeas relief.

Further on January 16, 2005 I filed a Motion to Allow Petitioner to Effect Service of Process Pursuant to FRCP 4. Again, as of this date no response to the Motion has been forthcoming from the Office of the U.S. Attorney.

Can you please apprise me as to whether the Court has acted on the request to allow service of the Petition upon the Respondent, the U.S. Attorney for the District of Massachusetts and the Attorney General of the United States, as well as authorizing the show cause which is a part of the initial filing.

Thank you for your courtesy in this matter. The reason for the urgency in this matter is based upon the calculation of "good time" credits which relate to my release date which will occur later this year. I await the Court's consideration to the requests noted in this communication.

Sincerely,

JACK C. CHILINGIRIAN
22512-039 UNIT I (CAMP)
FEDERAL MEDICAL CENTER DEVENS
P.O. BOX 879
AYER, MA. 01432

cc: U.S. Attorney's Office District of Massachusetts
U.S. District Court Clerk's Office District of Massachusetts

EXHIBIT "B"

Duplicate copy to be

DATE-STAMPED AND RETURNED

February 20 2005
IN CLERKS OFFICE

United States District Court
District of Massachusetts
1 Courthouse Way
Suite 2300
Boston, MA. 02210

2005 FEB -3 P 12: 29

U.S. DISTRICT COURT
DISTRICT OF MASS.

ATTN: Don Stanhope, Deputy Clerk

RE: Jack C. Chilingirian v. David L. Winn
Civil Action No. 05-10005-RCL

Dear Mr. Stanhope:

I thank you for your note advising me of the identity of Mr. Frank Crowley as the head of Immigration and Naturalization Office. I also appreciate the copy of the Order dated January 5, 2005 (which is misdated as 1/5/04 on the face of the Order) which indicates that the Clerk's Office is to serve a copy of the Petition upon the Office of the United States Attorney General and the U.S. Attorney's Office.

In examining the docket entries I note that no effort has been made to accomplish such service, even though some 27 days have elapsed since the entry of the Order. Can you provide me with an explanation as to why this does not appear on the docket entries, and if your office has not sent the copies of the Petition to the remaining individuals that are required to be served, when they will in fact be sent the required documents?

I also note that the Order of January 5, (sic) 2005 allows the Government 60 days to respond to the Petition when in fact Docket Entry No. 2 states that the responsive pleading is due within 20 days of the receipt of the documents. Can you advise as to the nature of the discrepancy?

It is important that I be apprised of the actual events and when service is to be accomplished. This case involves good-time credits which the BOP has refused to authorize on my behalf. Every day that this case is delayed prejudices me in reference to a final resolution.

I thank you in advance for responding to my inquiries. A duplicate of this letter is enclosed to be date stamped and returned in the self-addressed postage pre-paid envelope.

Sincerely,

JACK C. CHILINGIRIAN
22512-039 UNIT I (CAMP)
FEDERAL MEDICAL CENTER, DEVENS
P.O. BOX 879
AYER, MA. 01432

Encl.

EXHIBIT "C"

DUPLICATE COPY TO BE

DATE-STAMPED AND RETURNED

FILED
IN CLERKS OFFICE
February 7, 2005
2005 FEB -9 P 3:20
U.S. DISTRICT COURT
DISTRICT OF MASS

United States District Court
District of Massachusetts
1 Courthouse Way
Suite 2300
Boston, MA. 02210

ATTN: Don Stanhope, Deputy Clerk

RE: Jack C. Chilingirian v. David L. Winn
Civil Action No. 01-10005-RCL

Dear Mr. Stanhope:

On February 2, 2005 I sent the original and one copy of the enclosed letter to your offices in reference to the above noted matter. I received a date-stamped copy indicating that you had received and docketed the letter on February 3, 2005.

However, you did not respond to the questions I asked about and would appreciate being advised of the following:

- (1) When was service of process effectuated on the U.S. Attorney's Office and when was the Petition served on the Attorney General of the United States?
- (2) If service has been made as required under judge Lindsay's Order of January 5, 2005 can you provide me with a copy of the docket entry showing that return of service has been accomplished?

A duplicate copy of this letter is enclosed to be date-stamped and returned in the self-addressed postage pre-paid envelope.

Sincerely,

JACK C. CHILINGIRIAN
22512-039 UNIT I (CAMP)
FEDERAL MEDICAL CENTER DEVENS
P.O. BOX 879
AYER, MA. 01432

Encl.

EXHIBIT "D"